TWAILing feminist engagement with international law: Toward an intersectional governance feminism

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The recently published *Handbook on Feminist Engagement with International Law* ['the Handbook'] does not only provide a glimpse at the breadth of contemporary critical feminist international law scholarship, but, perhaps more importantly, it surveys potential futures for the field. In other words, it is not necessarily an exercise in taking stock as much as it is one in contemplating different visions for critical, feminist approaches to international law. This is a particularly important endeavor at a time when feminists, while increasingly occupying governing positions (in international law and elsewhere), are facing criticism for failing to achieve the transformative potential of feminism. As Diane Otto puts it in the *Afterword* to the Handbook: "We need to learn how to engage strategically with powerful institutions without mistaking feminism's uncanny institutional doubles for feminist transformation".

Based on the diverse visions presented by the Handbook contributors, the editors, Kate Ogg and Susan Harris Rimmer, 'deduce general future directions' for the field and, more specifically, identify four overarching objectives: (1) diversifying feminist engagement with international law; (2) making feminist engagement more influential; (3) improving women's lives; and (4) building bridges with other critical theories. In light of the many shortcomings of contemporary theoretical and practical ('governance feminist') approaches to international law, I argue that we need to put particular emphasis on the fourth aspect: building bridges between feminism and other critical theories. 'Building bridges' should be understood as intersectionality. Taking an intersectional approach requires us, while still focusing on gender, to recognize that gender always simultaneously takes on other identities such as race, class, and religion. This does not only hold for theoretical, scholarly work but also for activism/political decision-making. Only a 'feminist' approach to international law that attempts to recognize the varied experience of women under international law can truly exercise its full transformative potential.

The editors of the Handbook note at the outset that the past two decades have been "the best and worst of times, in the truly Dickensian sense" for feminist international law scholars. It is 'the best of times' because, as Janet Halley and her colleagues have recently pointed out, feminists are no longer a "*vox clamantis in deserto*". Rather, as Halley observes, feminists are now in positions of power: 'Governance Feminism', which they define as "every form in which feminists and feminist ideas exert a governing will within human affairs" has become a reality. 'Governance Feminism' is a purely descriptive, rather than normative, category: Many of its achievements are to be welcomed and applauded, but the entry of feminists into powerful positions in the international bureaucracy can also pose problems. In fact,

many prominent scholarly voices are critical of the particular kinds of feminism that have gained influence in the realm of international law. In an interview with the *Voelkerrechtsblog* in 2016, Hilary Charlesworth observed that the feminism that has gained influence in international law is a "limited, fractured idea of feminism". She aptly compared the governing feminism(s) to 'space food': "pre-packaged, powdered food" that astronauts take with them into space. Even though it is food, it is drained of "all the moisture, they reduced it and [took] out much of the texture and the freshness". How can we ensure that governing feminism(s) are not reduced to 'space food'-feminism(s)?

Janet Halley and her colleagues argue that the crux of the matter lies in the kinds of feminism(s) that have found their way into international governance institutions and are dominating them today. Along these lines, Karen Engle notes that it is "commonsense narratives" based on liberal and structural bias feminist understandings that led to the prevailing 'carceral feminism' in international law today. Liberal feminists argue for the inclusion of women in international law and suggest that such an inclusion is necessary and sufficient to achieve gender equality. Structural bias feminists, on the other hand, emphasize sexual subordination of women as the main vehicle of such subordination. Their objective is to remedy said structural bias and overcome the structural discrimination of women. The dominance, and limitations, of liberal and structural bias feminism in international law seem to indeed provide at least a partial explanation for the shortcomings of feminist approaches to international law in practice. The major early critiques of these approaches came from Third World feminists. They challenged the exclusion of Third World women's experiences by (mostly Western) feminist scholars and questioned the uniform representation of the category 'woman' and their subordination as misunderstanding or ignorant of non-Western realities. Western feminism was/is often seen as perpetuating colonial or neocolonial ideas and agendas (Gayatri Spivak: "White men are saving brown women from brown men"), which position women as victims, thereby negating their agency. As Giovanna Maria Frisso points out in her contribution, the "single universal narrative of struggle" developed out of the context of white, bourgeois women and as such only furthers the continuous marginalisation of Third World women. In order to avoid such longstanding shortcomings of mainstream feminism, it is crucial to adopt an approach that routinely takes into account different social and political identities such as race, gender, and religion. Only by adopting an intersectional feminist approach to international law can we ensure that we are sensitive to the varied realities of women and improve their everyday lives.

The Third World scholars' charges do not, in my opinion, mean that Western feminists should ignore non-Western societies and strictly mind their own business. The contributions to the Handbook illustrate the importance of such studies, as they can lead to surprising, and at times even contradictory conclusions about the relationship between 'culture', international law and the everyday lives of women. In her keynote speech (as printed in the Handbook), Sima Samar points to the example of Afghanistan in which "[r]espect for religion and culture was used as an excuse not to talk with or about women […] even with some humanitarian projects". However, culture is not immutable but rather highly dynamic – and often made by men. In

another contribution, a case study of the Maputo Protocol on gender equality, Jing Geng reveals that (African) culture and gender equality can be compatible and even provide women "with a sense of ownership and agency in their advocacy for the realisation of gender equality". What these contributions show is not only that engagement with non-Western contexts by Western feminists is possible but that it is, in fact, warranted in order to build a shared, feminist agenda through which we can uphold certain universal values such as gender equality.

Considering the commitment to universal values in international (human rights) law, feminist approaches must pay particular attention to TWAIL (Third World Approaches to International Law) and Third World feminist perspectives. In this context, I do not consider Third World approaches to be applicable only to the Global South: There is a Third World in the First World, and vice versa. Importantly, Frisso emphasizes that the category 'Third World woman' is aligned with anti-essentialist critiques of international law in that it is a constructed and disputed category that 'embraces a normative perspective, which aims at making heard various marginalised voices'. In fact, according to Frisso, only a Third World perspective sufficiently recognizes Third World women's agency and allows for the discursive construction of a shared, feminist agenda. This provides an example of how anti-essentialist scholars can adopt essentialist political positions, or at least its terminology, while at the same time maintaining their theoretical anti-essentialist position. So-called 'strategic essentialism' will likely remain necessary in international (human rights) law. (Third World) women will remain dependent on 'spokeswomen' to advocate and speak for them (as 'depictors' or 'proxies') – even though we might be convinced not only that the boundaries of the category 'woman' or 'Third World woman' are fluid but also that its essence ('womanhood') is (partially) fictitious. Josephine Jarpa Dawuni illustrates this point in her contribution to the Handbook in which she refers to 'African women': even though we know that there is no such thing as "the experience of African women", we can only begin to understand the diversity of contributions to international law of women of African descent by focusing on the contributions of *individual* women and the *collective* of African women.

While this kind of strategic essentialism might well be warranted in these contexts, we have to reject 'one-size-fits-all' feminism – in theory and practice. Applying multiple lenses and integrating other critical approaches into our analyses and our governance strategies and activism enables us to identify previously neglected areas in international law that have had a disproportionately negative impact on Third World women (as opposed to the universal woman and as opposed to Third World men). This is why, contrary to the concerns of some scholars, applying such an approach not only to theoretical engagements but also to activism does not take away from the power of feminist approaches but only enriches the positive impact on women's everyday lives.

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